

## **COMPLAINT 2000 - NO. 2 - CONFLICT OF INTEREST**

### **REASONABLE CAUSE DETERMINATION - ORDER OF DISMISSAL**

#### **I. Nature of the Complaint**

The complaint is general and vague but apparently alleges that Representative Cox has a conflict of interest because of his employment with Washington State University and his employment with the Rural Education Center, Educational Service District (ESD) 101. In addition, it is alleged that the Representative failed to file this employment information with this Board for preview; that he violated the law prohibiting certain outside financial interests; and that he apparently used his legislative office for personal gain or private advantage.

#### **II. Question of Jurisdiction**

In certain circumstances the State Ethics Act requires that contracts with state agencies, including employment situations, be submitted to the Legislative Ethics Board for a conflict of interest analysis before the contract or employment becomes operative. "Agency" is defined in **RCW 42.52.010(1)** as follows:

"Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

By this definition, an Educational Service District is not a state agency. The allegation that Representative Cox should have filed notice of this employment arrangement with the Board is dismissed for lack of jurisdiction.

#### **III. Procedural History**

Complaint 2000 - No. 2, was received on April 5, 2000. A factual investigation was conducted pursuant to RCW 42.52.420. The Board deliberated on the complaint at its regular meeting on May 11, 2000.

#### **IV. Determination of Allegations of Fact**

Representative Cox began teaching classes at Washington State University over ten years ago. When the University opened a branch campus in Spokane, he continued teaching his classes at the new site. He is presently a part time professor and his speciality is working with those who seek administrative credentials in the public school system. His teaching schedule, which includes seminars and contacts outside the classroom, is flexible and is marked by peaks and

valleys of activity. His salary is computed as a fraction of a full time employee and is paid to him over the course of a year. It is common University policy to administer its payroll in this fashion, especially for part time professors with teaching duties outside the classroom. Representative Cox retired from K-12 education in June, 1998. When he retired he was Superintendent of the Colfax School District. In 1999 he was appointed to the legislature and was elected in November to fulfill the remainder of the legislative term. Representative Cox filed notice of his employment relationship with Washington State University with this Board on April 3, 2000.

## **V. Determination of Allegations of Ethics Law Violations**

### **a. Conflict of interest - RCW 42.52.020**

We recently reaffirmed the citizen-legislator concept, based upon the constitutional principle of a part time legislature (**Complaint 1999 - No. 5**). This principle establishes a presumption in favor of employment outside the legislature, for legislators. Lobbying and offering legislative advice for compensation would be examples of "per se" conflicts of interest (**Advisory Opinion 1969 - No. 1**). There are no facts in this case which support a reasonable belief that a "per se" conflict exists. A conflict of interest can also occur if a legislator accrues a benefit as a member of a business, profession, occupation, or group to a greater extent than other members of the particular class while discharging his or her legislative duties (**Advisory Opinion 1995 - No. 1** - and numerous other references contained therein). There are no facts here to suggest any conflict of interest.

### **b. Filing requirements - RCW 42.52.120**

Prior to our decision in **Complaint 1999 - No. 5** ("Murray"), this filing requirement focused on personal services contracts and independent contractors. In Murray we held that, prospectively, we would require most non-competitive contracts between legislators and state agencies be submitted before-the-fact for conflict analysis, regardless of their characterization as "ordinary employment contracts" or "personal service contracts." Representative Cox was employed by Washington State University as a part time instructor for years before he became a legislator. Moreover, he was under no duty to seek Board approval of this continuing employment relationship because of the prospective ruling in Murray, nevertheless he filed with the Board. There are no facts to suggest there is any reasonable cause to believe this statute has been violated.

### **c. No outside compensation unless certain conditions are satisfied - RCW 42.52.120**

The pertinent part of this statute prohibits a legislator from receiving any thing of economic value outside his or her official duties unless certain conditions are met.

1. The contract must be bona fide and actually performed;

2. The performance of the contract must not be within the course of the official duties or under the individual's official supervision;
3. The performance of the contract must not require unauthorized disclosure of confidential information; and
4. The contract cannot have been expressly created or authorized by the officer or employee in his or her official capacity.

No reasonable cause exists to believe that any of these conditions have not been met.

d. **RCW 42.52.900** - the intent section of the State Ethics Act

The complaint alleges that the intent section of the State Ethics Act has been violated. The Complainant misreads the law. There are substantive sections of the Act which address the issue of improper personal gain or private advantage. The intent section is basically a statement of values and serves as a guide to the interpretation of the substantive sections but it is not self-executing. There are no facts alleged or discovered which would indicate that there is any reasonable cause to believe that Representative Cox's long standing employment with Washington State University is in any way connected with his recent status as a legislator.

## **VI. Conclusion and Order**

This Board determines that this complaint is a fishing expedition and barely, if at all, alleges conduct sufficient to investigate. There are no facts alleged or discovered which even approach the reasonable cause standard we must find before proceeding with the complaint process. The complaint is dismissed.

---

James A. Andersen, Chair

---

Date